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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,879	03/08/2004	George Carver	61404-1100	2091
24504 7590 06/25/2009 THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP 600 GALLERIA PARKWAY, S.E. STE 1500 ATLANTA, GA 30339-5994				
EXAMINER DUDNIKOV, VADIM				
ART UNIT 3663		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/795,879

Applicant(s)

CARVER ET AL.

Examiner

VADIM DUDNIKOV

Art Unit

3663

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 10 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10, 13-34, 48-51 and 53-58, 69-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-10, 13-34, 48-51 and 53-58, 69-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-849)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Amendment filed 3/10/09 forms the basis for this Office Action.

Claims 1, 8, 18, 28 and 69 have been amended. Claims 2, 11, 12, 35-47, 52 and 59-68 are canceled. Claims 1, 3-10, 13-34, 48-51, 53-58 and 69-71 have been pending.

Those objections or rejections that have been overcome by amendment are omitted from the present Office Action and are considered withdrawn.

Claim amendment overcome rejection of claims 1, 3-10, 13-34, 48-51, 53-58 and 69-71 based upon 35 USC 103 (a) and said rejection are withdrawn.

Response to Arguments

2. Applicant's arguments in section I are not persuasive because item 8-10 of the Third Declaration of Charles Pennington are referring to economic aspects of invention but not a specific claim language. However, containers disclosed by Minshall have the same close location of spend fuel as the Applicant's one.

In response to declarant's argument that the prior art fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "a design in accordance with claims can results an increase of the amount of spend nuclear fuel that can be stored"; remarks, page 17, lines 22+) are not recited in the

rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

3. Applicant's arguments in sections II, III, VI and V relating to the incorrect drawing 5 are not persuasive and objection of drawings and Specification and Rejection of claims under 35 USC 112, first and second paragraphs still valid because an apparatus as shown in FIG. 5 cannot operate as shown in FIG. 8, 9 as disclosed in Specification and as claimed. The reason of said controversies is **not a scale** of the drawing 5, as Applicant argued on page 20, but a **principally difference** in attachment configurations as shown in FIG. 5 and as disclosed in specification and as claimed. Ordinary skill in the art cannot to build or use invention as claimed with using of the principally incorrect Drawing 5 because this drawing drawn to the principally different embodiment of the container with a possibility of tubs rotation around the pin as with an obvious ordinary hinge attachment.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) **are required** in reply to the Office action to avoid abandonment of the application. No new matter should be entered.

Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must

be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. Applicant's argument on page 22+, lines 22+ related to claims 1, 3-10, 13-34, 48-51, 53-58, and 69-71 are rejected under 35 U.S.C. § 112, second paragraph as indefinite, are persuasive and said rejection are withdrawn.

5. Applicant's argument in section VI and VII related to claims 1, 3-10, 13-34, 48-51, 53-58, and 69-71 are rejected under 35 U.S.C. § 103, are persuasive because claims amendments overcome said rejection and said rejection are withdrawn.

Rejection of amended claims is established in light of further consideration of Application, Arguments and search of the prior Art presented below.

Drawings

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims or said features should be removed.

Therefore, the limitation of claim 7, "the plurality of tubes includes a plurality of flat load

bearing surfaces at the corners of respective ones of the tubes, the flat load bearing surfaces on the first one of the tubes engaging the plurality of flat bearing surfaces on the second one of the tubes" must be shown or the features canceled from the claims (see claims 7, 17, 27, 28 and 50). Regarding said limitation: as can be seen in FIG. 5, connection of rod 8, 12 with rod 20, 22 by pin cannot connect flat bearing surfaces of corners 60 and 62 together as claimed in claims 7, 17, 27, 28 and 50 and as shown in FIG. 9. The apparatus as shown in FIG. 5 cannot operate as shown in FIG. 8, 9 as disclosed in Specification and as claimed. The reason of said controversies is **not a scale** of the drawing 5, as Applicant argued on page 20, but a **principally difference** in attachment configurations as shown in FIG. 5 and as disclosed in specification and as claimed. Ordinary skill in the art cannot to build or use invention as claimed with using of the principally incorrect Drawing 5 because this drawing drawn to the principally different embodiment of the container with a possibility of tubs rotation around the pin as with an obvious hinge attachment.

No new matter should be entered.

7. The limitation of claim 1, "the cylindrical wall" must be shown by reference number on the drawings or the features should be canceled from the claims (see claims 1, 8, 18, 28 and 48).

No new matter should be entered.

8. The limitation of claim 1, "the cylindrical wall of each of the rods contacting at least two recesses associated with at least two of the tubes" must be shown or the features should be canceled from the claims (see claims 1, 8, 18, 28 and 48). As can be seen in

FIG. 5, rod 8, 12 and rod 20, 22 are not contacted with at least two of the tubes as claimed in the claims 1, 8, 18, 28 and 48.

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art

to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. The specification is objected to under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The specification is objected to because the limitation of claims 7, 17, 27, 28 and 50, "the plurality of tubes includes a plurality of flat load bearing surfaces at the corners of respective ones of the tubes, the flat load bearing surfaces on the first one of the tubes engaging the plurality of flat bearing surfaces on the second one of the tubes" must be disclosed with recitation of drawing's position or the features canceled from the claims (see claims 7, 17, 27, 28 and 50). As can be seen in FIG. 5, connection of rod 8, 12 with rod 20, 22 by pin cannot connect flat bearing surfaces of corners 60 and 62 together as claimed in claims 7, 17, 27, 28 and 50 as shown in FIG. 9. No new matter should be entered.

10. The specification is objected to under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The specification is objected to because the limitation of claim 1, "the cylindrical wall" must be shown by reference number on the drawings or the features should be canceled from the claims (see claims 1, 8, 18, 28 and 48). No new matter should be entered.

11. The specification is objected to under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The specification is objected to because the limitation of claim 1, "the cylindrical wall of each of the rods contacting at least two recesses associated with at least two of the tubes" must be shown or the features should be canceled from the claims (see claims 1, 8, 18, 28 and 48). As can be seen in

FIG. 5, rod 8, 12 and rod 20, 22 are not contacted with at least two of the tubes as claimed in the claims 1, 8, 18, 28 and 48.

No new matter should be entered.

The objection to the specification will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 7, 17, 27, 28 and 50 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) 7, 17, 27, 28 and 50 contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had

possession of the claimed invention. The reason of this rejection is the same as discussed in sections 6 and 9 of this Office Action and the same as reason of the drawing and the specification objection.

13. Claims 1, 3-10, 13-34, 48-51, 53-58 and 69-71 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims 1, 8, 18, 28 and 48 contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The reason of this rejection is the same as discussed in sections 7 and 10 of this Office Action and the same as reason of the drawing and the specification objection.

14. Claims 1, 3-10, 13-34, 48-51, 53-58 and 69-71 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims 1, 8, 18, 28 and 48 contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The reason of this rejection is the same as discussed in sections 8 and 11 of this Office Action and the same as reason of the drawing and the specification objection.

15. Claims 7, 17, 27, 28 and 50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, because by reasons disclosed in sections 12 its metes and bounds of the claimed invention are not defined, rendering the claims indefinite.

16. Claims 1, 3-10, 13-34, 48-51, 53-58 and 69-71 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, because by reasons disclosed in sections 13 its metes and bounds of the claimed invention are not defined, rendering the claims indefinite.

17. Claims 1, 3-10, 13-34, 48-51, 53-58 and 69-71 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, because by reasons disclosed in sections 14 its metes and bounds of the claimed invention are not defined, rendering the claims indefinite.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and

any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vadim Dudnikov whose telephone number is 571- 270-1325. The examiner can normally be reached on 8:00 - 17:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack W. Keith can be reached, Mon-Fri 7:00am-4:00 pm, at telephone number 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VD.
/Rick Palabrica/

Primary Examiner, Art Unit 3663